FIL

Supreme Court of the United States

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX.

	PAGE
The Opinions Below	1
Jurisdiction	2
Statement of Questions for Review	2
Statutes Involved	3
Statement of the Case	3
Reasons for the Allowance of the Writ	10

Table of Authorities.

Cases.

Atlantic Works v. Brady, 107 U. S. 192	16
Cameron Iron Works v. Stekoll, 242 Fed. 2d 17, 21	15
Crane Packing Company v. Spitfire Tool & Machine Co., 276 Fed. 2d 271, 274	17
Cuno Corporation v. Automatic Devices Corporation, 314 U. S. 84	16
Dunbar v. Meyers, 94 U. S. 187	16
Great Atlantic & Pacific Tea Co. v. Super-Market Equipment Corporation, 340 U. S. 147	17
Landis Machine Co. v. Parker-Kalon Corporation, 190 Fed. 2d 543, 544	15
Stearns v. Tinker & Rasor, 252 Fed. 2d 589, 597	15
Symington Co. v. National Castings Company, 250 U. S. 383, 385	15

Statutes.

35 U. S. C. Section 251	3
35 U. S. C. Section 252	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No.....

DEERE & COMPANY,

Petitioner,

vs.

JOHN W. ENGLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, Deere & Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled action on November 28, 1960.

THE OPINIONS BELOW.

The Opinion of the United States District Court for the Southern District of Illinois, Northern Division, printed in Appendix to Brief for Defendant-Appellant (DA* 92-110), is reported, 182 Fed. Supp. 133, and the Opinion of the

*DA is abbreviation for Appendix to Brief for Defendant-Appellant, copy of which is being filed herewith.

United States Court of Appeals for the Seventh Circuit, reprinted on Pages 21-28 of the Appendix to this Petition (abbreviation "App."), is reported, 127 U. S. P. Q. 442. Petition for Rehearing was filed on December 13, 1960, and said Petition was denied on January 18, 1961.

JURISDICTION.

The Judgment of the United States Court of Appeals for the Seventh Circuit was entered on November 28, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1). Federal jurisdiction of the action is based on 28 U. S. C. Section 1338, it being an action arising under the Patent Laws of the United States.

STATEMENT OF QUESTIONS FOR REVIEW.

1. Can a patentee, desiring narrower claims by reissue, avoid admission that he was claiming more than he had a right to claim in the original patent by making superfluous insertions in the specification in alleged correction of defects there?

2. Twine holders of the prior art comprise one, two or three flat elements for cooperation with a pair of parallel twine entraining disks; of the two-element type, some have their outer longitudinal edges solidly bridged and some have them completely separated; of the three element type, the prior art holders have their elements bridged. Is it patentable to omit the bridge from the three-element type, leaving the longitudinal edges of the elements completely separated as in the two-element type?

STATUTES INVOLVED.

The pertinent statutory provisions are printed in the Appendix annexed hereto, Pages 19-20. They are U. S. Code, Title 35, Section 251, Reissue of Defective Patents, and Section 252, Effect of Reissue.

STATEMENT OF THE CASE.

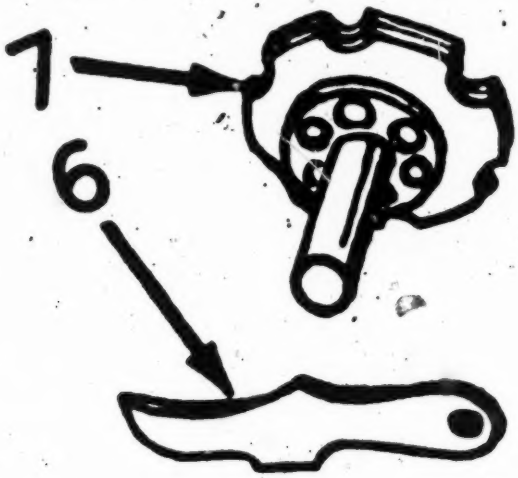
Facts re Questions No. 1 and 2.

The patent in suit, England Reissue Patent 23,927 (DA 119), relates to a "Twine Holder," and the first three paragraphs of its specification are as follows:

> "This invention relates to a twine holder and particularly to an improved device for retaining the twine within the twine entraining disk of knotting devices.
>
> In the utilization of knot tying devices on such devices as reapers and haybalers, etc., it is customary to retain the cord or twine with which the bales or bundles are tied up in a twine entraining rotary disk in which a spring fastened finger assists in holding the cord or twine in the entraining disk. In heavy application, particularly in balers, difficulty is had because of the twine pulling out of the entraining disks, leaving loose bales when the same are dropped on the field.
>
> The present invention provides a twine holder for cooperation with the twine engaging disk of the usual knotting device having sufficient twine engaging surface to prevent disengagement of the twine from the twine entraining disk. This is accomplished by providing, in addition to the usual central twine holding finger, a plurality of laterally spaced fingers extending over the outer circumference of the twine engaging disk so as to provide a plurality of twine engaging surfaces on the inner and outer sides of the twine engaging disk."

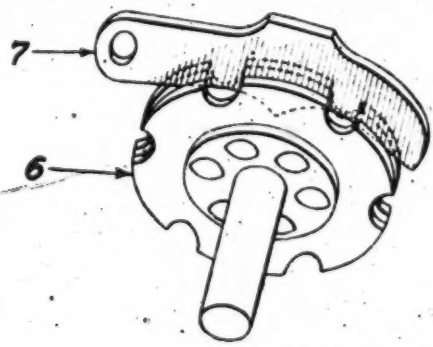
For many years, it was common, in grain reapers and corn binders, to use the two disks with just a single finger between them, Deere & Company, defendant, itself going back to 1911 in such use (DA 59).

The following drawing shows, somewhat crudely, the pair of such disks (7) and the single finger (6) for insertion between them:



This drawing is a reproduction of drawings on Page 108 of defendant's 1951 operating manual (Defendant's Exhibit 9) for its corn binders (DA 61). Defendant's Exhibit 8 is one of these holders (DA 59, 60).

The following drawing shows how these parts go together and are mounted for operation:



In the earlier days, hay was baled with wire, using an utterly different mechanism for joining the ends of the wire lengths surrounding the bales.

Later, when twine was attempted for use in such baling, the same type of tying mechanism as in grain reapers and corn binders was employed, and International Harvester Company, Chicago, employed a holder with an extra finger to engage one of the disks on its outside. The following are reproductions of photographs of Defendant's Exhibit 3A, the holder, and Defendant's Exhibit 3B, the associated disks:

DEFENDANT'S EXHIBIT
3A

DEFENDANT'S EXHIBIT
3B